



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 17, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on September 29, 2015, at Janesville, Wisconsin.

The issue for determination is whether the Department erred in its issuance of a FS tax intercept notice to petitioner on 8/14/15 for the amount of \$1,619.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.

2. The agency determined an overpayment and sent a notice on March 19, 2015 to petitioner at [REDACTED] [REDACTED]. This was the correct address for petitioner at that time and remains his current address.
3. On March 20, 2015, the agency sent another overpayment notice which was a computer generated version for the same amount. This included an overpayment work sheet and notice that an appeal must be filed within 90 days of the date of the notice.
4. On 4/2/15 the agency sent a repayment agreement to the same address.
5. On 5/4/15, 6/2/15, and 7/2/15 the agency sent Dunning notices to petitioner at the same address.
6. A tax intercept notice was issued on 8/14/2015.
7. Petitioner's first and only request for hearing was received by the Division of Hearings and Appeals on 8/17/15.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department's policy concerning tax intercepts is set out in the FoodShare Wisconsin Handbook, App. § 7.3.2.10. A tax intercept is used if a person becomes delinquent in repaying an overpayment. Before utilizing the intercept, the agency must send three dunning notices that offer the person the opportunity to agree to a repayment schedule. *FS Handbook* at § 7.3.2.10.

Petitioner's only argument was that he did not receive the overpayment notices. However, he concedes that he received the repayment agreement. He did not believe that he owed the money back so he did not respond to request a hearing at that time. He did, however, inquire of his appeal rights at the agency and was sent a request for hearing form on April 9, 2015. At that time, he still had more than two months in which to make a timely request for hearing. Petitioner explained that he did not send in the form because he procrastinated.

If petitioner had filed a timely request for hearing on the overpayment he would have had an opportunity to argue the merits of the overpayment. At this point, it is too late for him to argue that the overpayment was incorrect. The tax intercept was issued correctly.

CONCLUSIONS OF LAW

The tax intercept was not issued in error.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

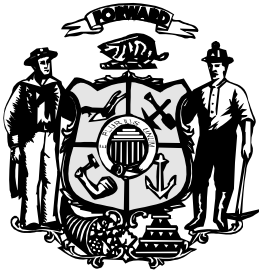
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of October, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 21, 2015.

Rock County Department of Social Services
Public Assistance Collection Unit